

CWP No. 6789 of 1995

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 6789 of 1995
Date of Decision: 23.10.2017**

Dalip Singh (deceased through his LRs)

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. G.P. Singh, Advocate,
for the petitioner.

Mr. R.K. Doon, A.A.G., Haryana.

AMOL RATTAN SINGH, J. (ORAL)

Learned counsel for the petitioner has referred to two judgments of the Supreme Court, in **B.D. Gupta** vs. **State of Haryana** AIR 1972 SC 2472 and **M. Gopala Krishna Naidu vs State of Madhya Pradesh** AIR 1968 SC 240, to submit that the order Annexure P-6, by which the petitioner has been given only suspension allowance for the suspension period from 10.11.1983 to 13.11.1984, is a wholly cryptic and non-reasoned order and therefore unsustainable in the light of the ratio of the aforesaid judgments.

Specifically, learned counsel has referred to paragraphs 10 to 14 of the judgment in **B.D. Gupta's case** (supra), where their Lordships after reproducing Rule 7.3 of the Punjab Civil Services Rules, Volume I, Part I (as applicable to the State of Haryana), held as follows:-

*“It is clear that before passing an order under Rule 7.3
the authority concerned has to form an opinion as to whether the*

Government servant has been fully exonerated and, also, whether, in the case of suspension, the order of suspension was wholly unjustified.”

Reference in the next paragraph was also made by their Lordships to the judgment in Naidus' case (supra), reproducing a larger part of that judgment, wherein it was observed as follows:-

“The very nature of the function implies the duty to act judicially. In such a case if an opportunity to show cause against the action proposed is not afforded, as admittedly it was not done in the present case, the order is liable to be struck down as invalid on the ground that it is one in breach of the principles of natural justice.”

Thereafter, it was held in Guptas' case that:-

“We have no doubt in our minds that in this case also justice and fair play demand that the Government should have given the appellant a reasonable opportunity to show cause why an order affecting his pay and emoluments to his prejudice should be made.”

Other than that, learned counsel for the petitioner has also submitted that in the present case the service of the petitioner having been suspended on 10.11.1983 till 08.11.1984, and the charge-sheet not having been issued to him for a period of two and half years thereafter, till 19.05.1987, there would be no reason to not pay the petitioner the emoluments due to him for the suspension period, after the order of dismissal was reversed in appeal by the Financial Commissioner & Secretary to Government of Haryana, Department of Education, on 18.03.1992 (Annexure P-4), in fact holding that no *mala fides* had either been alleged or proved against the petitioner and that the irregularities committed by him were of a very minor nature, not deserving punishment of removal from service. It has also been stated in the said order that “if Headmasters are to be removed on such charges there will hardly be any one who could come in service.”

Thus, Mr. G.P Singh contends that with such observations made, it was wholly irrational of the Government to have not paid the petitioner his emoluments for the period of suspension, other than the suspension allowance.

Per contra, Mr. R.K. Doon, learned Assistant Advocate General, Haryana, has pointed to paragraphs 17 and 18 in **B.D. Guptas'** case itself, wherein while noticing the earlier judgment of the Supreme Court in **State of Assam** vs. **Raghava Rajagopalachari** (Civil Appeal Nos. 1561 and 1562 of 1966 decided on 06.10.1967), it was held (in Guptas' case), that the said judgment would not apply as, in Rajagopalachari, he had not been fully exonerated, whereas in the case of B.D. Gupta, on one charge he had been exonerated and the other charge had been withdrawn. Therefore, he was to be paid his full emoluments during the period of suspension.

The other issue in this petition is as to whether the period that the petitioner remained “without duty”, could have been treated as extra ordinary leave without pay, as has been done in the order dated 18.03.1992 (Annexure P-4), which otherwise is wholly in favour of the petitioner, as he was simply imposed a punishment of stoppage of one increment with cumulative effect, instead of dismissal.

As regards that issue, as has already been noticed in the order of this Court dated 28.08.2017, the proviso to sub-rule 5 of Rule 7.3 (supra) gives a choice to the Government employee to opt that the competent authority may convert his period of absence to leave of the kind due and admissible to him.

Hence, without seeking such option from the Government employee, the competent authority cannot on its own covert the period of absence into leave of the kind due, though as per sub-rule 5 itself, the said period is not to be treated

as period spent on duty, unless the competent authority specifically directs that it shall be so treated.

In other words, the period of absence, whether on account of suspension or dismissal etc., is to be treated as period not on duty as per sub-rule 5 of Rule 7.3, unless the punishing authority deems it proper to treat it as duty period, but it can only be converted into leave of the kind due upon the option of the employee being exercised in that regard.

In view of what has been discussed hereinabove, in the opinion of this Court, the impugned order, Annexure P-6, cannot be sustained, it having been passed wholly without any reasoning, as was required to be given in terms of the ratio of the judgment of the Supreme Court in **B.D. Guptas'** case (supra) and consequently, the said order is quashed.

Since as to whether the period of absence from duty on account of suspension and dismissal, is to be treated as duty period or not, is something which the competent authority will have to decide in terms of sub-rule 5 of Rule 7.3, the last part of the order dated 18.03.1992 is also quashed, by which the period “without duty” has been treated as extra ordinary leave without pay.

Though the petitioner has since passed away and is now represented by his LRs, the competent authority, i.e. respondent no. 1 herein, would take a decision in the circumstances of the case, keeping in view the observations made in the order dated 18.03.1992 by his predecessor, to the effect that no *mala fides* have been alleged or proved against the petitioner and that the irregularities committed by him were of a very minor nature. Thereafter, a decision shall be taken in terms of sub rule 5, as to whether the period of absence is to be treated on duty or not, after giving opportunity of hearing to the legal representative of the petitioner, upon due show cause notice, naturally, to be issued in that regard.

Similarly, what is to be paid to the petitioner for such period of absence, would accordingly be decided by respondent no. 1, within a period of three months, by passing a reasoned order in that regard.

The petition is allowed to the aforesaid extent.

October 23, 2017 nitin	(AMOL RATTAN SINGH) JUDGE
Whether speaking/reasoned	Yes
Whether Reportable	Yes